

## REMARKS

### **Introduction**

Claims 1-7, 10-19 and 30-31 are pending in this application, of which claim 1 is independent. Claims 8-9 and 20-29 have been cancelled.

Claims 1 and 5 have been amended to correct informalities in the claim language and to more clearly define the present subject matter. Care has been taken to avoid introducing new matter.

For at least the reasons set forth below, it is respectfully submitted that all pending claims are now in condition for allowance.

### **Rejection under 35 U.S.C. § 102**

Claims 1-4, 11-14, 16-19, 30 and 31 were rejected under 35 U.S.C. § 102 as being anticipated by Misaka (US Pub. No. 2004/0029023 as WO 02/091079). This rejection is traversed for at least the following reasons.

Applicant respectfully submits that Misaka fails to disclose the claimed first and second pattern having a phase shifter and a shielding portion *surrounding the phase shifter*, as recited by claim 1. The Examiner asserts that “the first region being the bottom part of figure 52:b, the second region being the part of figure 52:b that is right to the bottom part, and the third region being the top part of figure 52:b,” referring to FIG. 52B of Misaka. However, it is clear that in the alleged first and second regions (and third region), a shielding portion does not surround a phase shifter (T1, T2). As such, it is clear that Misaka fails to disclose “*a first pattern and a second pattern each having a line shape and having a mask enhancer structure including a phase shifter ... and a shielding portion surrounding said phase shifter*” of claim 1.

Further, Misaka fails to disclose the claimed third pattern located adjacent to the first pattern along a direction vertical to the line direction of the first pattern, as recited by claim 1. In Misaka, the alleged third pattern in FIG. 52B is located along a direction parallel to the line direction of the alleged first region with a phase shifter (transmittance T2), and light shielding portion sandwiched between the alleged first region and third region. In other words, the alleged third region of Misaka is not located along a direction vertical to the line direction of the first region and with a transparent portion sandwiched between the first region and the third region. As such, it is clear that Misaka also fails to disclose “*a third pattern located adjacent to said first pattern along a direction **vertical** to the line direction of said first pattern, at a distance not larger than a given distance and with a **transparent portion** sandwiched between said first pattern and said third pattern,*” as recited by claim 1.

Further, the Examiner asserts that “the transparent region is sandwiched between the second and third regions,” referring to Abstract, FIGS. 15B, 44B, 5, 15, and 43 of Misaka. However, Abstract, FIGS. 15B, 44B, 5, 15, and 43 of Misaka fail to teach the position of “the transparent region” so as to be sandwiched between the alleged second and third regions. In contrast, in claim 1, the transparent portion is located so as to be sandwiched between the first pattern and the third pattern. As such, it is clear that Misaka fails to disclose this feature of claim 1.

Furthermore, the Examiner asserts that “Misaka also teaches a varying width of the phase shifters so that the second pattern region has a smaller phase shifter width than the first pattern region and the width of the transparent portion is larger than a given dimension as well,” referring to FIGS. 28 and 29 and paragraphs [0302], [0113] and [0114] of Misaka. Applicant, however, submits that in FIGS. 28 and 29, the width of the phase shifter does not change. Also,

as illustrated in FIGS. 43(h) and 44(b) of Misaka, Misaka shows that, in line-shaped pattern, the width of the center part of the phase shifter, the sides of which are sandwiched by the transparent portion, is larger than the width of the edge of the phase shifter sandwiched by the transparent portion in three directions of the edge. In other words, in Misaka, the width of the phase shifter varies in the same line-shaped pattern. In contrast, the claimed subject matter is configured such that the phase shifter of the first pattern is a line-shaped pattern with a first constant width, and the phase shifter of the second pattern is a line-shaped pattern with a second constant width, where the first line width is smaller than the second line width.

Applicant further notes that the Examiner's reliance of *In re Rose*, *In re Rinehart* or *In re Dailey* is incorrect. M.P.E.P. 2144.04 illustrates these cases to show that mere change in size and shape from those of prior art would not be patentably distinct. In contrast, in the present case, the limitation "said first line width is smaller than said second line width" is not a change in size and shape from the cited Misaka reference. As such, the Examiner's assertion has no merit.

As such, it is clear that, at a minimum, Misaka fails to disclose the above identified features of claim 1. Accordingly, claim 1 and all claims dependent thereon are patentable over Misaka. Thus, Applicant respectfully requests that the Examiner withdraw the rejection of claims 1-4, 11-14 and 16-18 under 35 U.S.C. § 102.

### **Rejection under 35 U.S.C. § 103**

Claims 5-7, 10 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Misaka as applied to claims 1-4, 11-14, 16-19, 30 and 31, in view of Ohsaki. Applicant traverses.

Applicant incorporates herein the arguments previously advanced in traversal of the rejection under 35 U.S.C. § 102(b) predicated upon Misaka. The additional cited reference does not teach or suggest the claimed first, second and third patten of claim 1, from which claims 5-7, 10 and 15 depend, which are missing from Misaka. Therefore, the combination of Misaka with Ohsaki would still fail to disclose the claimed features, and it would not have been obvious to add these features to such a combination.

Accordingly, claims 5-7, 10 and 15 are patentable over the cited references. Thus, Applicant respectfully requests that the Examiner withdraw the rejection of claims 5-7, 10 and 15 under 35 U.S.C. § 103.

**Conclusion**

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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